Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association ("CCA") submits these comments in response to the *FNPRM* issued by the Commission on November 19, 2012 in the above-captioned docket.[1] The *FNPRM* seeks comment on (a) how to reallocate the $185 million in Connect America Fund ("CAF") Phase I support that price cap incumbent local exchange carriers ("ILECs") declined to accept, and (b) other potential modifications to the CAF program more broadly. Consistent with its prior comments in the Commission's universal service reform proceedings,[2] CCA urges the Commission not to devote *any* additional funding to a mechanism that is exclusively or preferentially available to ILECs. Rather, the Commission should focus on deploying the available funding in a more competitively and technologically neutral manner to improve the efficiency of the CAF mechanism and to maximize consumer welfare. In particular, the Commission should terminate CAF Phase I and implement revisions to CAF Phase II to increase the amount of funding available to mobile wireless providers and other competitive carriers.

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1 *Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 12-138 (rel. Nov. 19, 2012) ("*FNPRM*").

2 *See* Letter from Steven K. Berry, President and CEO, Competitive Carriers Association to The Hon. Julius Genachowski, Chairman, Federal Communications Commission, submitted in WC Docket No. 10-90 *et al.* (Oct. 31, 2012); Ex Parte Letter of Competitive Carriers Association, WC Docket No. 10-90 *et al.* (Nov. 8, 2012); Ex Parte Letter of Competitive Carriers Association, WC Docket No. 10-90 *et al.* (Nov. 20, 2012); and Ex Parte Letter of Rebecca Thompson (CCA), Ross Lieberman (ACA), Steven Morris (NCTA), Matt Larsen (WISPA), Dean Marson (EchoStar), Jeffrey Blum (DISH Network, LLC), and Michael Rapelyea (ViaSat, Inc.), WC Docket No. 10-90 (Dec. 14, 2012) ("Multi-Stakeholder Letter").

BACKGROUND

CCA is the principal association representing competitive wireless providers across the United States. CCA represents the interests of more than 100 members, including rural, regional, and national wireless carriers that rely on high-cost universal service support. CCA has been an active participant in the Commission's universal service reform proceedings, and has been a steadfast proponent of establishing competitively and technologically neutral support mechanisms that harness the efficiency of low-cost technologies to deliver telecommunications services to rural communities. In particular, CCA (along with other representatives of competitive carriers) has explained that stark preferences for wireline carriers in the allocation of high-cost support threaten to subvert universal service principles and cause substantial harm to consumers.[3] Indeed, given consumers' manifest preference for mobile wireless services and their continuing abandonment of rural wireline technology,[4] dedicating the overwhelming bulk of high-cost funding (nearly $4 billion annually) to ILECs under the CAF program inverts the priorities that should guide future funding allocations.

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3 *See, e.g.*, Multi-Stakeholder Letter; Ex parte letter of the Competitive Carriers Association, WC Docket No. 10-90 *et al.*, (Oct. 29, 2012); Ex Parte Letter of RCA — The Competitive Carriers Association, WC Docket No. 10-90 *et al.* (Aug. 3, 2012); Comments of RCA—The Competitive Carriers Association, WC Docket No. 10-90 *et al.* (filed Jan. 18, 2012); Reply Comments of RCA—The Competitive Carriers Association, WC Docket No. 10-90 *et al.* (filed Sept. 6, 2011).

4 *See, e.g.*, Industry Analysis and Technology Division, Wireline Competition Bureau, INTERNET ACCESS SERVICES: STATUS AS OF DECEMBER 31, 2010, at 1 (rel. Oct. 2011) (noting that "[g]rowth [in Internet access connections] is particularly high in mobile Internet subscriptions," where "mobile subscriptions exceeded 84 million by December 2010 – up *63%* for the year") (emphasis added); Letter of Steven K. Berry, President and CEO, RCA, to Julius Genachowski, Chairman, FCC, WC Docket No. 10-90 *et al.*, at 3 (filed Oct. 19, 2011) (citing multiple studies demonstrating "that consumers are cutting the cord and that growth of mobile services is dramatically outpacing the growth of fixed services").

In response to the Commission's *USF/ICC Transformation Order and FNPRM* ,[5] CCA proposed programmatic revisions that would mitigate the harms associated with the Commission's decision to reserve most high-cost funding for ILECs. In particular, CCA supported rule changes that would diminish the support that otherwise would be available to incumbent ILECs in the future, which in turn would free up additional funding that could be redirected to wireless carriers. Among other things, CCA argued that in the event price cap LECs were to decline funding from Phase I of the CAF, and to the extent they decline future funds for which they have a right of first refusal during CAF Phase II, such funding should be shifted to the Mobility Fund.[6]

The disappointing results of CAF Phase I confirmed CCA's deeply held concern that an ILEC-only funding mechanism was doomed to fail. The price cap ILECs not only refused to accept $185 million of the $300 million available,[7] despite the inflated subsidy of $775 per line,[8] but several of them indicated that they would expand their broadband networks into unserved

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5 *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*USF Transformation Order* or *USF Transformation FNPRM*").

6 *See generally* Comments of RCA—The Competitive Carriers Association, WC Docket No. 10-90 *et al.* (filed Jan. 18, 2012); *see also supra* n.2 (identifying subsequent ex parte letters).

7 *See* Press Release, FCC, *FCC Kicks-Off "Connect America Fund" with Major Announcement: Nearly 400,000 Unserved Americans from Rural Communities in 37 States Will Gain Access to High-Speed Internet Within Three Years* (July 25, 2012), *available at* http://thedcoffice.com/late_releases_files/07-25-2012/DOC-315413A1.pdf; Matthew S. Schwartz, *Telcos Accept Less Than Half of Available FCC Connect America Funds*, COMMUNICATIONS DAILY, July 25, 2012, at 3-4. The following six carriers declined all or a portion of CAF Phase I funding allotted to them: AT&T (declined all $47.9 million); CenturyLink (declined $54 million of $89.9 million); FairPoint Communications (declined $2.8 million of $4.9 million); Virgin Islands Telephone (declined all $255,231); Verizon (declined all $19.7 million); and Windstream (declined $59.7 million of $60.4 million).

8 *USF Transformation Order* ¶¶ 144, 159.

areas only if the Commission committed to provide vastly more funding (and far more than it would take to deploy wireline network facilities).[9] In stark contrast, the initial Mobility Fund auction successfully distributed the full $300 million to 33 carriers, which committed to build facilities covering more than 83,000 road miles in unserved areas.[10] Given the use of a reverse auction framework for the Mobility Fund auction, the Commission can conclude that it achieved maximum deployment at the lowest price, something that cannot be said with respect to CAF Phase I.[11]

In light of this experience, CCA had hoped that the *FNPRM* would propose to reallocate the $185 million in unclaimed CAF Phase I funding to the Mobility Fund, so that mobile wireless carriers could begin putting that funding to use. While the Commission did not expressly seek comment on that option, the *FNPRM* at least asks whether to forego another round of Phase I support and instead to devote the remaining funding to CAF Phase II (which at least presents a *possibility* of directing some funds to competitive carriers in the event ILECs decline their right of first refusal).[12] CCA submits that allocating the unused $185 million to CAF Phase II and implementing changes to make Phase II support more accessible to competitive carriers would far more effectively serve the public interest than devoting yet

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9 Windstream Election and Petition for Waiver, WC Docket No. 10-90 et al, at 6. (filed July 24, 2012) (seeking approximately $3,700 per additional location served); Fairpoint Communications, Inc. Petition for Waiver, WC Docket No. 10-90 et al., at 11-12 (filed Sept. 10, 2012) (seeking more than $4,000 per additional location served); ACS of Anchorage et al. Petition for Waiver, WC Docket Nos. 10-90 and 05-337, at 8 (filed Sept. 29, 2012) (seeking $5,000 to $7,800 per additional location served).

10 *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, Public Notice, 27 FCC Rcd 12031 ¶ 1 (WTB 2012).

11 A wireless cost model for awarding funds to multiple carriers would lead to both enhanced competition in funded areas and reduced costs, and therefore would likely produce an even more efficient result that the reverse auction. *See infra* p. 6-7.

12 *FNPRM* ¶¶ 8, 41-43.

additional support—at staggeringly high per-customer increments—to ILECs' exclusive use. Alternatively, if the Commission is not willing to defer the $185 million to Phase II, it should refrain from spending those funds at all,[13] rather than committing those funds and any additional amounts to the flawed and ineffective pursuit of an extended Phase I.

DISCUSSION

Although much of the *FNRPM* contemplates a further round of CAF Phase I funding to build on the so-called "success" of the 2012 round,[14] the Commission plainly should reject that option. As a broad range of stakeholders emphatically agree, Phase I of the CAF was wasteful, inefficient, and *un*successful, and the appropriate response to price cap carriers' widespread refusal to accept $775 per line in build-out subsidies is not to water down performance requirements or to shovel additional funds towards ILECs in the hope they will expand their networks.[15]

Nevertheless, in an apparent effort to justify the initial decision to grant preferential treatment to price cap ILECs, the *FNPRM* continues to explore a variety of ways to induce those providers to accept increased funding. For example, the *FNPRM* suggests lowering the required speed thresholds (notwithstanding ILECs' assertions about the superior attributes of fiber), making it easier for ILECs to treat an area as unserved (in spite of contrary evidence), eliminating the existing per-location requirements, and even "dramatically increas[ing]" the available funding to $485 million in 2013.[16] But rather than bending over backwards to subsidize ILEC networks irrespective of efficiency considerations or the implications for

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13 *Id.* ¶ 44.

14 *FNPRM* ¶ 9; *see also* ¶¶ 9-40 (discussing options for a further round of Phase I support).

15 *See* Multi-Stakeholder Letter at 3-5.

16 *FNPRM* ¶¶ 12, 13-16, 18-25, 36.

competition, the Commission should fundamentally reconsider the apparent assumption that ILECs are uniquely positioned to deliver broadband services to currently unserved communities. Instead, the Commission should embrace market forces and make such funding available to lower-cost providers that can make more efficient use of scarce resources than carriers seeking several thousand dollars per location.

As CCA explained in response to the recent Public Notice regarding Phase II of the Mobility Fund,[17] the best way to accomplish that goal is to modify the CAF rules to better embrace competitive and technological neutrality as a guiding principle. The Commission should start by terminating Phase I of the CAF and allocating the unused $185 million from 2012 to Phase II. Next, the Commission should act on procompetitive proposals advanced by CCA and others in response to the *USF Transformation FNPRM*. Specifically, the Commission should take all available steps to reduce the amount of funding that is reserved for the exclusive use of ILECs or to which ILECs will have preferential access. Relatedly, the Commission can and should modify the budgets it tentatively established for 2013 and beyond to avoid imposing arbitrary limits on the amount of funding available to carriers employing wireless technology.

In addition, the Commission should develop a wireless cost model so that it can allocate efficient funding to mobile wireless providers without selecting a single auction winner and entrenching that provider to the detriment of competition. A forward-looking cost model can provide support to multiple competitive carriers in direct proportion to their success in attracting customers; moreover, expressly tying support payments to a carrier's success in capturing customers would allow the Commission to reduce funding needs while simultaneously promoting competition and operational efficiency. Carriers can establish appropriate business

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[17] Comments of Competitive Carriers Association, WC Docket No. 10-90 & WT Docket No. 10-208 (filed Dec. 21, 2012).

models and deployment plans based on their projected penetration levels and the corresponding per-customer support payments.[18]

CONCLUSION

As CCA has argued since adoption of the *USF Transformation Order*, the Commission should take advantage of the opportunity presented by ongoing rulemaking proceedings to mitigate the significant harms caused by the wireline preferences established by that order. If nothing else, the Commission should refrain from compounding the harm by devoting additional wasteful sums for ILECs' exclusive use.

Respectfully submitted,

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[18] *Id.* at 6.